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No. 89-1361

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Supreme Court of the United States

OCTOBER TERM, 1989

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Petitioner,

—v.—

LARRY WOLLERSHEIM,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

PETITIONER'S SECOND SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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March 8, 1991

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PETITIONER'S SECOND SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Petitioner Church of Scientology of California submits this second Supplemental Memorandum in response to this Court's recent decision in *Pacific Mutual Life Insurance Co. v. Haslip*, No. 89-1279, ____ U.S. ____ (March 4, 1991).

1. The Decision and Opinions in *Haslip* Warrant That Certiorari Be Granted in This Case, Either for the Purpose of Undertaking Plenary Review, or, at the Least, for the Purpose of Remanding to the Court of Appeal of California for Reconsideration in Light of *Haslip*

The Court's opinion in *Haslip* recognized the importance of reviewing the particular method of taxing and reviewing punitive damages in a given case or jurisdiction. The Court

focused on the jury instructions, the presence or absence of meaningful review by the trial court to protect against unreasonable punitive damage awards, and the presence or absence of meaningful appellate review of the verdict. In addition, Justice Kennedy's concurrence emphasized:

> A verdict returned by a biased or prejudiced jury no doubt violates due process, and the extreme amount of an award compared to the actual damage inflicted can be some evidence of bias or prejudice in an appropriate case.

Slip op. at 3 (Kennedy, J., concurring).

In this case, there was no meaningful review by the trial court, the appellate review was undertaken pursuant to a standard disapproved by this Court in *Haslip*, and the appellate court upheld a modified punitive damage (and compensatory damage) verdict despite its explicit recognition that the amount of the jury's award ($30,000,000, of which $25,000,000 were punitive damages) actually demonstrated passion or prejudice. Indeed, the court explicitly found the award "not just excessive but preposterous." Pet. at 43a.

A. In *Haslip*, the Court emphasized that the Supreme Court of Alabama had established meaningful "post-trial procedures for scrutinizing punitive awards", slip op. at 17, pursuant to which trial courts are required " 'to reflect in the record the reasons for interfering with a jury verdict, or refusing to do so, on grounds of excessiveness of damages.' " *Id.* (quoting *Hammond v. City of Gadsden*, 493 So.2d 1374, 1379 (Ala. 1986)). Indeed, Alabama trial courts are enjoined to consider such factors as culpability, deterrence, and impact upon the parties and upon third parties. *Id.*

In the present case, the trial court refused to exercise any such responsibilities, and under California law, unlike Alabama law, was under no obligation to do so. The Church's motions for new trial and judgment notwithstanding the verdict, urging, *inter alia*, that the $30,000,000 damage award

was grossly excessive, were rejected with the simple notation "denied" on a minute order of the court. Pet. at 45a.[1]

B. In *Haslip*, this Court relied in major part upon "the detailed substantive standards [the Alabama Supreme Court] has developed for evaluating punitive awards" at the appellate stage. Slip op. at 17. In doing so, this Court contrasted the Alabama standards for appellate review, which permit the vacating or reduction of a punitive damage award on grounds of mere excessiveness, with the standards applied by the appellate courts in Vermont and Mississippi, which permit an appellate court to set aside an award only when it evinces passion, bias or prejudice (Mississippi) or is manifestly and grossly excessive (Vermont). *Id.* at 17-18 n.10.

In California, as the Court of Appeal recognized, the appellate courts are limited in the same way as the courts of Mississippi; they may set aside or modify a punitive damage award only if they determine "whether, after reviewing the entire record in the light most favorable to the judgment, the award was the result of passion or prejudice." Pet. at 41a-42a.

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1 In California, unlike Alabama, trial courts need not give any reasons for a decision to *deny* a post-trial motion based on an excessive award of damages; only if the court *grants* the motion need it explain its reasoning. Cal. Code Civ. Pro. § 657 (West's 1976); *Gerard v. Ross*, 204 Cal.App.3d 968, 978-79, 251 Cal.Rptr. 604, 610 (1988). A trial court's unexplained denial of a post-trial motion asserting that damages are excessive is reviewed under the deferential abuse of discretion standard. *Windeler v. Scheers Jewelers*, 8 Cal.App.3d 844, 854, 88 Cal.Rptr. 39, 45-46 (1970).

The trial court's broad discretion is not limited solely to the *amount* of punitive damages, but also to the *method* by which punitive damages are imposed. Thus, at least according to the results in the instant case, the trial courts in California have the discretion to instruct or to refuse to instruct juries that, pursuant to statute—Cal. Civ. Code § 3294(b)—punitive damages may not be awarded on a *respondeat superior* theory. The trial court's refusal to give such an instruction in this case, in apparent open disregard of the statute, was not even addressed by the Court of Appeal. Pet. at 28 n.23. Application of the statutory standard would thus appear to be discretionary.

To be sure, as the Court of Appeal noted, the passion and prejudice standard has been "somewhat more refined, employing three factors to evaluate the propriety of the award." *Id.* at 42a.[2] The three factors, however, serve only to help define the essential passion and prejudice standard. In sharp contrast to the Alabama practice, but just as in Mississippi, without a finding of "passion and prejudice", the California appellate courts are without power to disturb a punitive damage award. *Bertero v. National General Corp.*, 13 Cal.3d 43, 64-65 & n.12, 118 Cal.Rptr. 184, 199-200 & n.12, 529 P.2d 608 (1974); *Downey Savings & Loan Ass'n v. Ohio Casualty Ins. Co.*, 189 Cal.App.3d 1072, 1099, 234 Cal.Rptr. 835, 850 (1987), *cert. denied*, 486 U.S. 1036 (1988); Pet. at 41a-42a.

C. By finding that the verdict in this case was the result of passion or prejudice on the part of the jury, but nevertheless *modifying* rather than vacating the punitive damage award, the Court of Appeal below reached an anomalous and unconstitutional result. As Justice Kennedy emphasized in his concurring opinion in *Haslip*, "A verdict returned by a biased or prejudiced jury no doubt violates due process. . . ." Slip op. at 3; *see Minneapolis, St. Paul and S.S.M. Ry. Co. v. Moquin*, 283 U.S. 520, 521 (1931); *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 160 (1967). The passion or prejudice of the jury thus infects not only the amount of the punitive damage award, but also the determination whether to impose punitive damages *at all*, which, in California at least, is a matter wholly within the discretion of the jury. *Brewer v. Second Baptist Church*, 32 Cal.2d 791, 800-01, 197 P.2d 713 (1948); *Haines v. Parra*, 193 Cal.App.3d 1553, 239 Cal.Rptr. 178 (1987); 6 B. Witkin, *Summary of California Law* § 1373, at 840 (9th ed. 1988). California's system, applied in this case, of affirming but modifying punitive damage awards upon an explicit finding that the jury's discretionary award

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2 The three factors—degree of reprehensibility of the defendant's conduct, relationship between the amount of the award and the actual harm suffered, and relationship to defendant's net worth—are similar to some of the categories applied by the Alabama Supreme Court, but are far less comprehensive. *Haslip*, slip. op. at 18.

of punitive damages was infected by passion and prejudice, violates due process.

Indeed, the California system of appellate review is doubly defective under the due process clause because, in cases in which it is found that the punitive damage award is so excessive as to evince passion and prejudice on the part of the jury, California appellate courts are permitted to choose *either* to modify the punitive damage award, to vacate the punitive award, or to vacate the judgment entirely, without meaningful standards or principles to guide that choice. *Cunningham v. Simpson*, 1 Cal.3d 301, 310, 81 Cal.Rptr. 855, 861, 461 P.2d 39, 45 (1969); *Zhadan v. Downtown Los Angeles Motors*, 66 Cal.App.3d 481, 502, 136 Cal.Rptr. 132, 144 (1976). While one California court has stated that where "the jury arrived at an excessive verdict from passion and prejudice, we doubt the propriety of conditioning the order for new trial on the acceptance of remittitur", *Collins v. Lucky Markets, Inc.*, 274 Cal.App.2d 645, 79 Cal.Rptr. 454, 460 n.3 (1969), and while the California Supreme Court at least once stated that "any doubts should be resolved in favor of granting a new trial", *Liodas v. Sahadi*, 19 Cal.3d 278, 285-86, 137 Cal.Rptr. 635, 639, 562 P.2d 316 (1977), the cases are legion in which the California appellate courts have, as here, found passion and prejudice but have merely reduced the punitive damage award, without any attempt to explain why outright vacatur is not appropriate or required by due process. *See Little v. Stuyvesant Life Ins. Co.*, 67 Cal.App.3d 451, 470, 136 Cal.Rptr. 653, 664 (1977) (jury award infected by passion and prejudice; "justice will be best served" by reducing punitive damage award, rather than vacating it, without further explanation); *Allard v. Church of Scientology of California*, 58 Cal.App.3d 439, 452-53, 129 Cal.Rptr. 797, 805-06 (1976) (same), *cert. denied*, 429 U.S. 1091 (1977); *Rosener v. Sears, Roebuck & Co.*, 110 Cal.App.3d 740, 753, 168 Cal.Rptr. 237, 244 (1980) (same; "modify . . . to do justice"), *app. dism'd*, 450 U.S. 1051 (1981); *Goshgarian v. George*, 161 Cal.App.3d 1214, 1230, 208 Cal.Rptr. 321, 331-32 (1984) (same).

Once again, the problem is highlighted by the instant case, where the Court of Appeal chose to modify rather than vacate both the compensatory and punitive damage awards, without a word of explanation as to why it chose that course or pursuant to what standards.[3]

2. *Haslip* Did Not Address The Questions of Whether the First Amendment Proscribes Punitive Damage Awards for Speech or Peaceful Religious Practices, or Whether it Mandates Application of More Precise Procedural and Substantive Standards Than Are Required in An Ordinary Tort Case

In its petition in this case, the Church argued that the First Amendment imposed substantive and procedural limitations upon the award of punitive damages. *See* Pet. at 26-29.[4] These issues were raised in the *Haslip* case in several *amicus* briefs, including a short *amicus* brief submitted by the petitioner herein.[5]

The Court's opinion in *Haslip* did not discuss the questions raised under the First Amendment. Justice Scalia's concurrence, however, did recognize "the proposition that punitive damages, despite their historical sanction, can violate the

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3 The Court of Appeal made *no* finding, nor could it reasonably have done so, that the evidence at trial *compelled* a finding of liability, let alone of punitive damages. Rather, in reviewing the evidence, the Court of Appeal stated that it was doing so in the light *most favorable* to the plaintiff, Pet. at 6a, and held only that there was "substantial evidence" to support the verdict, *id.* at 10a-11a, not that the evidence mandated a verdict for the plaintiff. With respect to punitive damages, as we have shown, an appellate court can never presume that such an award is compelled, because it is always discretionary with the jury. *Brewer v. Second Baptist Church*, 32 Cal.2d at 800-01.

4 Similar questions are raised by the pending petition in *International Society for Krishna Consciousness v. George*, No. 89-1399 (filed Feb. 28, 1990).

5 *See* Brief *Amicus Curiae* of The National Council of Churches of Christ in the U.S.A., *et al.*; Brief *Amicus Curiae* of CBS Inc., *et al.*; Brief *Amicus Curiae* of Church of Scientology of California.

First Amendment." Slip op. at 15 (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 349-350 (1974)).

The questions raised concerning First Amendment limitations on the imposition of punitive damages arise frequently, both in cases involving religious free exercise and in cases involving speech. For the reasons stated in the petition herein and in the *amicus* briefs filed in *Haslip*, the petition should be granted to resolve those questions.

3. Certiorari Should Be Granted on the First Three Questions Raised By The Petition

The *Haslip* case, of course, did not involve the first three questions raised by the petition in this case, concerning First Amendment proscriptions upon the trial, judgment and affirmance of the underlying verdict in this case, which rested upon the plaintiff's voluntary participation in peaceful religious practices. Those questions remain particularly deserving of this Court's attention now, for the reasons stated in the petition.

We merely note that the state of uncertainty and chaos in the courts on these questions not only remains unabated, but grows apace. In *Higgins v. Maher*, 210 Cal.App.3d 1168, 258 Cal.Rptr. 757 (1989), *cert. denied*, ____ U.S. ____, 110 S.Ct. 1135 (1990), another district of the Court of Appeal of California dismissed the complaint of a Roman Catholic priest against his Bishop and the Church for his removal from his position, subsequent psychiatric treatment, which included drugs and electroshock therapy,[6] and public revelation of alleged private defamatory information. The court found that the complaint adequately alleged "torts of invasion of privacy, defamation, and the intentional and negligent infliction of emotional distress." *Id.* at 1175, 258 Cal.Rptr. at 761. The

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6 Higgins averred that "upon persuasion from the Church," he "underwent a program of rehabilitation with a therapy-oriented organization within the church," during which he was "given various drugs which caused him to become nervous and lose much of his reasoning ability" and that he was "treated with electroshock therapy." 210 Cal.App.3d at 1172, 258 Cal. Rptr. at 758.

court, however, dismissed the complaint because, even if defendants had engaged in the alleged tortious conduct, "the acts so taken were part and parcel of the Bishop's administration of his ecclesiastical functions." *Id.* at 1175-76, 258 Cal.Rptr. at 761. As the court stated:

> the torts recited are simply too close to the peculiarly religious aspects of the transaction to be segregated and treated separately—as simple civil wrongs. The making of accusations of misconduct; the discussion of same within the order; the recommendation of psychological or medical treatment; the infliction, whether intentionally or negligently, of emotional distress—these are all activities and results which will often, if not usually, attend the difficult process by which priestly faculties are terminated.

Id. at 1176, 258 Cal.Rptr. at 761.

The practices in *Higgins* are in stark contrast to the peaceful religious practice of auditing[7] at issue in this case, where the plaintiff suffered no physical harm. Instead, the plaintiff decided, after ten years of adherence to the Scientology faith, that his participation in auditing caused him emotional harm, for which the jury awarded him the "preposterous" (Pet. at 43a) sum of $30,000,000. *Higgins* is in fundamental conflict with the decision of the Court of Appeal in this case, and represents yet another example of the varied and unreconcilable decisions in the area. Certiorari should be granted to resolve such questions.

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7 Auditing consists of a parishioner and auditor sitting in a room while the auditor asks a series of questions to which the parishioner responds. *See* Pet. at 3; *Hernandez v. C.I.R.*, 109 S.Ct. 2136, 2141 & n.2 (1989).

CONCLUSION

For the reasons stated herein, and in petitioner's previously filed petition and briefs, the petition for a writ of certiorari should be granted.

Dated: March 8, 1991

Respectfully submitted,

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